

February 7, 2001

William Bernhjelm
Director, Enforcement Division
Dept. of Natural Resources
500 Lafayette Road
St. Paul, MN 55155

RE: In the Matter of the Trespass Citations Issued to
Matthew James Kuckler, Jeffrey John Ondrusik and
Erik Joseph Ondrusik; OAH Docket Nos. 6-2000-13247-2,
6-2000-13248-2 and 6-2000-13249-2

Dear Director Bernhjelm:

Trespass Citations were issued to the above three individuals on September 27, 2000. The individuals appealed their citations, and a Prehearing Conference telephone call was scheduled for December 8. The conference did take place on that date, and it was agreed Conservation Officer Larry Francis and the three individuals would send me maps and other descriptive materials setting forth their sides of the story. The last of these documents was received on December 26, 2000. Having reviewed all of the materials, I believe that I have enough information to decide this matter, and do recommend that the citations be upheld.

The incident in question occurred on September 17, 2000 in northern Itasca County, about five miles southeast of Northone, in Section 12 of Grattan Township. On that day, Kuckler and the Ondrusiks were on their way to hunt grouse on state owned land in the north quarter of that section. They parked their car on County Road 31, which is the southern border of Section 12, and proceeded north across land owned by the Blandin Paper Company. They were familiar with this area, having crossed it before in order to access the state land. They knew that between the Blandin land and the state land lay a parcel owned by the Winkelmans. In past years, they had obtained permission from the Winkelmans to cross their land in order to get to the state land, but due to past problems involving disturbing the cows that pasture on the Winkelman land, they had been told that they no longer had permission to cross the property.

The Winkelmans own an 80-acre parcel which is roughly two-thirds pasture, and one-third swamp. The pastureland occupies the western two thirds of the parcel, while the eastern one third is the swampy area. There is a fence that runs east and west along the southern boundary of the Winkelman property, but the fence does not go all the way to the southeast corner of the property. Instead, it stops at the western edge of the swamp.

As the hunters proceeded north through the Blanden property, they encountered the fence, and turned right, following the fence until it ended where the swamp began.

They went around the end of the fence, and then continued north across the Winkelman property.

Not long after they had crossed onto the Winkelman land, they were seen by Christine "Tina" Winkelman, who yelled at them. At first, they turned and walked into the woods, but they re-entered the pasture to speak with Winkelman. A discussion ensued, and they left the property and waited near her house (about two miles away) while she called Conservation Officer Francis.

Officer Francis immediately came out to the Winkelman home, spoke with both Tina Winkelman and the hunters, and then went with the hunters while they showed him where they had been walking. Ten days later, after further investigation, Office Francis issued the citations because he believed the hunters were on "agricultural land" because of fencing, and, in addition, because he believed Tina Winkelman who told him that the land had been properly posted that year. He acknowledges, however, that he did not see any posted signs when he went with the hunters.

The Administrative Law Judge recommends that the citations be upheld because he believes that the land was posted, even though the hunters did not see any signs. The Administrative Law Judge does not believe, however, that the land was properly fenced so as to constitute "agricultural land" under the statute. That is because the land is not "within a maintained fence for enclosing domestic livestock". The east to west fence that the hunters went around ends at the swamp. However, there is no north south fence that begins at the north edge of the swamp and runs up to the northeast corner of Winkelman's property, neither is there a fence running along the north boundary of Winkelman's property. Under those circumstances, it can not be said that the land lies "within a maintained fence". The Administrative Law Judge accepts Office Francis' argument that the fence would not have to run through the swamp, if, as a practical matter, cattle would not go into the swamp. However, if the fence were, in fact, enclosing a cattle pasture, one would expect that the fence would pick up at the northern boundary of the swamp, proceed northward, and then turn to the west and proceed westerly all along the north edge of the Winkelman property. But it does not.

The hunters claim that they never saw a "no trespassing" sign, and they have no reason to believe that one was ever there. On the other hand, Ms. Winkelman believes that the parcel was posted on all corners within the last year. Her position would be consistent with the fact that the Winkelmans told the hunters that they could not hunt there because they were disturbing the cows. The Administrative Law Judge accepts Ms. Winkelman's assertion that the land was posted. What the law requires is that permission must be obtained to enter land that is posted so long as signs are posted "once each year". The law does not require that the signs be actually visible from all possible entry points, nor does it even require that the signs be up at the time of the entry. It is entirely possible that the hunters did not see a sign before they entered the land. But under the law, they should not have entered on the land without obtaining permission.

For the reasons stated above, the Administrative Law Judge recommends that the citations be upheld. The final decision in this matter, however, must be made by the Commissioner. The Commissioner may not issue his final decision until at least five days have passed from the date of receipt of this recommendation. During that five-day period, any person may file comments with the Commissioner regarding the recommended decision. After the Commissioner has made his final decision, he should serve a copy of it upon each party and the Administrative Law Judge by United States mail.

Sincerely,

ALLAN W. KLEIN
Administrative Law Judge

Telephone: 612/341-7609

AWK:aws

cc: Conservation Officer Larry Francis
Jeffrey John Ondrusik
Erik Joseph Ondrusik
Matthew James Kuckler